IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7582 of 1999

with

FIRST APPEAL No 7583 of 1999
with

CIVIL APPLICATIONS NOS. 8335/2000 AND 11233/2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HEIRS OF DECD.PARVATIBEN ISHWARBHAI CHAVDA

Appearance:
MR. P.K. PANCHOLI, AGP, for the appellant

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE K.M.MEHTA

Date of decision: 18/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Both these appeals under Section 96 of the Code of Civil Procedure arise out of the common judgement and common tortious act. They are being disposed of by this common judgement at the admission stage.

2 The appellants are the original defendants whereas the respondents are the original plaintiffs. They are hereinafter referred to as "defendants" and "plaintiffs" for the sake of convenience and brevity. The plaintiffs filed two suits for damages in the court of Civil Judge, at Surendranagar. Special Civil Suit No. 63 of 1997 was filed by the legal heirs and representatives of the deceased Parvatiben Ishwarbhai Chavda as indigent for the unfortunate demise of Parvatiben on account of house falling claiming compensation of Rs. 2 lakhs whereas the injured plaintiff Ganpatbhai Ishwarbhai Chavda filed Regular Civil Suit No. 57 of 1997 for personal injuries in the same fashion and claimed Rs. 5000/-.

3. Deceased Parvatiben and injured Ganpatbhai were staying in room No. 20 at Government Quarters known as 24 quarters situated behind S.T. Bus station, Surendranagar. Maintenance of the said quarters was on the part of the Executive Engineer, P.W.D. Surendranagar. The material used in the construction of the quarters was of inferior quality. The quarters were not maintained. They were not being repaired. Many a times attention of the department and the Government had been drawn for maintenance and repairs of the quarters. However, no action had been taken.

4. On 28.10.1996 at midnight the deceased and injured plaintiff Ganpatbhai were standing in the balcony of the quarter. Unfortunately, the entire portion of the balcony all of a sudden fell on the ground from third storey which resulted in death of Parvatiben and injury to Ganpatbhai. Deceased Parvatiben was aged 60 years. She was earning pension of Rs. 1100/-. She was also doing household work. She claimed to be earning in all an amount of Rs. 2000/-. After giving notice suit came to be instituted.

5. The defendant is common in both the matters i.e.

State of Gujarat, has appeared and resisted the suits by filing written statements and inter alia contending that the Government quarters were allotted for the purpose of residence only. There was no contract between the parties to pay any compensation to the occupier under any circumstances for the happening of such incident. Issues came to be framed at Exh. 9. The plaintiffs relied on their evidence and other documents. The defendants placed reliance on the evidence of one Deputy Engineer. After hearing the parties and considering the evidence, the trial court found that the plaintiffs have successfully proved that they are residing in the Government quarters and the defendant State of Gujarat is liable to maintain the said quarter and keep it in good condition.

6. That the plaintiffs have successfully established that on 28.10.1996 due to fall of balcony the death of Parvatiben was caused for which the plaintiffs are entitled to recover compensation of Rs. 2 lakhs from the defendant in Regular Civil Suit No. 63 of 1997 and an amount of Rs. 5000/- in Regular Civil Suit No. 57 of 1997 for the injuries suffered by Ganpatbhai from the defendant. They are also entitled to interest at the rate of 18% per annum from the date of filing of the suit till payment. Both the suits came to be disposed of by a common judgement & decree by the Trial Court on 21.8.1999. Hence these two appeals at the instance of the original defendant, State of Gujarat, came to be filed under Section 96 of the Code of Civil Procedure.

7. We have gone through the evidence relied on by the plaintiffs and accepted by the trial court. Copies of the evidences were supplied to us in course of hearing by the learned A.G.P. After having considered the submissions placed on behalf of the appellant and the facts and circumstances, we are of the clear opinion that the original plaintiffs who were occupiers of the Government quarters were victims of negligence and tortious action of the defendant State. Almost, all facts are not in dispute except the issue of liability.

8. The question, therefore, would arise as to whether decreeing the suit against the Government for negligent act in not maintaining and repairing the Government quarter occupied by the deceased and one injured plaintiff is justified in the facts and circumstances on the case or not? In fact, no elaborate further discussion is necessary for the simple reason that most of the facts are admitted. The deceased Parvatiben and her son Ganpatbhai are staying in the Government quarters and they were standing in a balcony

portion admeasuring 9 x 4 ft. which collapsed at the midnight resulting into fatal injuries to Parvatiben and personal injuries to Ganpatbhai.

9. It cannot be controverted that the maintenance, repairs and proper upkeepment of the Government allotted to the employees or workers on rental or otherwise is a duty of the department of the Government. It is not an answer for the Government to advance that the falling of building was not falling within their any inaction. They cannot be allowed to contend, also, that the entire responsibility was on the part of the victims of the tortious or negligent act. It is noticed that the balcony portion of the quarter occupied by the deceased Parvatiben and her son Ganpatbhai all of a sudden fell down. The trial court has, rightly, found that there was no proper maintenance, there was inferior quality of material used in the construction of the balcony and quarter. The view and conclusion recorded by the trial court for holding the original defendant, State of Gujarat, liable for payment of compensation are quite justified and we find no reason to interfere with the impugned judgement and award in both these appeals, particularly, in view of the fact that the tort-feasor or a negligent person in general and in particular, the State or the Public functionary cannot be allowed to contend that the maintenance, repairs and proper upkeepment of the quarters occupied by the third party is not their responsibility. In fact, we are surprised that the State has chosen to question the rightful claim of the occupants of the Government quarters who became victim of negligent act and want of proper care and caution to be exercised by filing this appeal. In our opinion, the amount of compensation awarded, in case of death of Parvatiben who was aged 60 years to the tune of Rs. 2 lakhs and amount of Rs. 5,000/- for personal injuries to the son Ganpatbhai who has filed a separate suit could not be said to be exorbitant or very high requiring our interference. Bearing in mind the celebrated principles of Law of Tort, the principles governing the amount of compensation and the factual scenario emerging from the record in these two appeals, we find both these appeals are meritless and accordingly, they are dismissed with no order as to costs.

In view of the judgment passed in the main matters, no orders are passed on the Civil Applications

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